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DECLARATION OF JUSTIN P. RAPHAEL IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION IN LIMINE NO. 3

Case Nos. 3:21-md-02981-JD, 3:20-cv-05761-JD, 3:20-cv-05671-JD, 3:21-cv-05227-JD, 3:22-cv-01746-JD

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

IN RE GOOGLE PLAY STORE ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

Epic Games Inc. v. Google LLC et al.,
Case No. 3:20-cv-05671-JD

In re Google Play Consumer Antitrust Litigation, Case No. 3:20-cv-05761-JD

State of Utah et al. v. Google LLC et al.,
Case No. 3:21-cv-05227-JD

Match Group, LLC, et al., v. Google LLC, et al., Case No. 3:22-cv-01746-JD

Case No. 3:21-md-02981-JD

**DECLARATION OF JUSTIN P. RAPHAEL
IN SUPPORT OF DEFENDANTS'
OPPOSITION TO PLAINTIFFS' MOTION
IN LIMINE NO. 3**

Judge: Hon. James Donato

Date: October 19, 2023

Time: 1:30 p.m.

Courtroom: 11

DECLARATION OF JUSTIN P. RAPHAEL

I, Justin P. Raphael, declare as follows:

1. I am an attorney duly admitted to practice law in the State of California and before this Court. I am a Partner at Munger, Tolles & Olson LLP, and represent the Defendants in this action. I submit this Declaration in support of Defendants' Opposition to Plaintiffs' Motion *in Limine* No. 3. The contents of this declaration are based on my personal knowledge. If called as a witness, I could and would testify competently to the matters set forth in this declaration.

2. **Exhibit 3** is a true and correct copy of an excerpt of the transcript of the deposition of B. Douglas Bernheim, Ph.D., taken in this litigation on April 6, 2023.

10 3. **Exhibit 4** is a true and correct copy of an excerpt of the Expert Report of Matthew
11 Gentkow, dated November 18, 2022.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on this 2nd day of October, 2023, in San Francisco, California.

/s/ Justin P. Raphael
Justin P. Raphael

EXHIBIT 3

HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE NORTHERN DISTRICT OF CALIFORNIA
3 SAN FRANCISCO DIVISION

4 -----x
5 IN RE GOOGLE PLAY STORE Case No.
6 ANTITRUST LITIGATION 3:21-md-02981-JD

7 THIS DOCUMENT RELATES TO:

8 Epic Games Inc. v. Google LLC,
9 et al.,
10 Case No. 3:20-cv-05671-JD

11 -----x
12 *HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY*

13 REMOTE VIDEOTAPED DEPOSITION BY VIRTUAL ZOOM OF
14 DOUGLAS BERNHEIM
15 Thursday, April 6, 2023

16 Reported By: Lynne Ledanois, CSR 6811
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HIGHLY CONFIDENTIAL - ATTORNEYS' EYES ONLY

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1 distribution method. It's an incremental
2 distribution method that is distributing to a
3 different population. So that's not really a
4 substitute.

5 BY MR. MACH:

6 Q Well, is the answer no, you've not
7 analyzed that type of substitution?

8 MR. BORNSTEIN: Object to the form of the
9 question.

10 THE WITNESS: Yes, the answer is no, I did
11 not analyze it because it wasn't necessary to reach
12 the conclusions that are in my report.

13 BY MR. MACH:

14 Q Does your report discuss the degree to
15 which Chinese app stores might be in a position to
16 expand outside of China?

17 A Yes.

18 Q Why couldn't that occur?

19 A Well, it could occur. You have some of the
20 Chinese OEMs operating in the rest of the world who
21 have started to move down the path towards, and in
22 many cases did, introduce their own app stores which
23 may be based on what they were doing in China. One
24 would assume that they were using that.

25 So in that case once they move it to the

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1 rest of the world, they are in the rest of the
2 world, so they are in the market. Before they do
3 that, the proper way to think about the Chinese
4 entities that could do that is as potential
5 entrants.

6 Q So you're talking, for example, about
7 Huawei. Huawei offers an app store both in China
8 and outside of China; correct?

9 A I think that's one of them.

10 Q If Huawei makes a sale in -- to a user in
11 Mongolia, that's in your relevant market. But if
12 Huawei, using its app store, makes a sale to a user
13 in China, that's not in the relevant market;
14 correct?

15 A Yes, I think that's right. As I understand
16 it, Mongolia is not part of China for this purpose,
17 but Google Play is there. Without being in any kind
18 of gray market, Google Play's conduct applies. So
19 that would be correct.

20 Q So the difference between Mongolia and
21 China in this instance is that Google Play is there
22 and the conduct applies?

23 A Google Play is there and the conduct applies
24 to Mongolia. That's why Mongolia would be in the
25 market. I haven't thought about Mongolia in

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1 I, LYNNE M. LEDANOIS, a Certified
2 Shorthand Reporter of the State of California, do
3 hereby certify:

4 That the foregoing proceedings were taken
5 before me at the time and place herein set forth;
6 that a record of the proceedings was made by me
7 using machine shorthand which was thereafter
8 transcribed under my direction; that the foregoing
9 transcript is a true record of the testimony given.

10 Further, that if the foregoing pertains to
11 the original transcript of a deposition in a Federal
12 Case, before completion of the proceedings, review
13 of the transcript [] was [x] wasn't requested.

14 I further certify I am neither financially
15 interested in the action nor a relative or employee
16 of any attorney or party to this action.

17 IN WITNESS WHEREOF, I have this date
18 subscribed my name.

19 Dated: April 7, 2023

20

21

22

23

Lynne Marie Ledanois

24

LYNNE MARIE LEDANOIS

25

CSR No. 6811

ERRATA SHEET

NAME OF CASE: *In re Google Play Store Antitrust Litigation, Case No. 3:21-md-02981-JD*
Epic Games Inc. v. Google LLC, et al., Case No. 3:20-cv-05671-JD
In re Google Play Consumer Antitrust Litigation, Case No. 3:20-cv-05761-JD
In re Google Play Developer Antitrust Litigation, Case No. 3:20-cv-05792-JD
State of Utah, et al., v. Google LLC, et al., Case No: 3:21-cv-05227-JD

DATE OF DEPOSITION: 4/6/2023

NAME OF DEPONENT: Douglas Bernheim

I, Douglas Bernheim, have read the transcript of my deposition taken on 4/6/2023. The contents thereof are an accurate transcription of the deposition, subject to the following corrections or changes:

Page	Line(s)	Original	Correction	Reason
6	7	Eric Scher	Eric Emch	Correction
15	12	rulings	rules	Transcription Error
24	15	time	point	Transcription Error
43	12	for	per	Transcription Error
57	22	with	of	Transcription Error
74	21	incentive	incentives	Transcription Error
77	7	app	Hug	Transcription Error
84	7	chair	share	Transcription Error
84	14	are	[Delete]	Transcription Error
86	5	app	Hug	Transcription Error
90	8	Outside	But outside	Transcription Error
91	19	I did	I had intended to – I did	Transcription Error
105	1	in-app	in app	Transcription Error
116	21	form	from	Transcription Error
117	13	knew	know	Transcription Error
126	5	of PK	indicate	Transcription Error
128	4	abandon	abandoned	Transcription Error
131	21	An	And	Transcription Error
135	15	It	And it	Transcription Error

ERRATA SHEET

NAME OF CASE: *In re Google Play Store Antitrust Litigation, Case No. 3:21-md-02981-JD*
Epic Games Inc. v. Google LLC, et al., Case No. 3:20-cv-05671-JD
In re Google Play Consumer Antitrust Litigation, Case No. 3:20-cv-05761-JD
In re Google Play Developer Antitrust Litigation, Case No. 3:20-cv-05792-JD
State of Utah, et al., v. Google LLC, et al., Case No: 3:21-cv-05227-JD

DATE OF DEPOSITION: 4/6/2023

NAME OF DEPONENT: Douglas Bernheim

Page	Line(s)	Original	Correction	Reason
147	12	As I said	No, as I said	Clarification
160	22	created	creating	Transcription Error
164	18	a ready	ready	Transcription Error
165	6	point	point that	Transcription Error
169	15	Android iOS	Android OS	Correction
170	17	Android iOS	Android OS	Correction
170	22	in or	and	Transcription Error
171	11	certain	sort of	Transcription Error
171	13	am a	am	Transcription Error
171	15	sort	sorts	Transcription Error
172	25	50	30	Transcription Error
174	10	the whole	that	Transcription Error
174	12	of	of the	Transcription Error
175	6	stop	just stop	Transcription Error
176	8	Yes	I do	Transcription Error
181	20	its move to	excluding	Transcription Error
185	9	30	40	Transcription Error
187	21	arguments	argument	Transcription Error
189	5	geographic	geographical	Transcription Error
189	23	No.	No, it's not –	Clarification
193	13	right	correct	Transcription Error
193	19	Do you know	Q Do you know	Clarification

ERRATA SHEET

NAME OF CASE: *In re Google Play Store Antitrust Litigation, Case No. 3:21-md-02981-JD*
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In re Google Play Consumer Antitrust Litigation, Case No. 3:20-cv-05761-JD
In re Google Play Developer Antitrust Litigation, Case No. 3:20-cv-05792-JD
State of Utah, et al., v. Google LLC, et al., Case No: 3:21-cv-05227-JD

DATE OF DEPOSITION: 4/6/2023

NAME OF DEPONENT: Douglas Bernheim

Page	Line(s)	Original	Correction	Reason
194	15	Start	Store	Transcription Error
194	21	kind	kinds	Transcription Error
194	25	decisions about	discussion of	Transcription Error
195	2	market now	market	Transcription Error
196	21	and in	and I think in	Clarification
196	25	it to	into	Transcription Error
197	2	the	my	Transcription Error
197	17	but	and	Transcription Error
199	9	minute	moment	Transcription Error
201	24	our	other	Transcription Error
202	15-16	around a year	a rounding error	Transcription Error
203	12	fact	facts	Transcription Error
205	18	the	those	Transcription Error
206	15	The	None of the	Transcription Error
208	17	Do	I'm not absolutely -- do	Clarification
209	6	regarding	concerning	Transcription Error
209	13	app	an	Transcription Error
210	1	alternative place	alternative	Transcription Error
214	25	try reading it	read it	Transcription Error
215	2	scanned through it	scanned it too quickly	Transcription Error
220	2	warnings	warnings – it's a long day	Transcription Error
220	17	that at that	that that	Transcription Error

ERRATA SHEET

NAME OF CASE: *In re Google Play Store Antitrust Litigation, Case No. 3:21-md-02981-JD*
Epic Games Inc. v. Google LLC, et al., Case No. 3:20-cv-05671-JD
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State of Utah, et al., v. Google LLC, et al., Case No: 3:21-cv-05227-JD

DATE OF DEPOSITION: 4/6/2023

NAME OF DEPONENT: Douglas Bernheim

Page	Line(s)	Original	Correction	Reason
220	18	let's look on the table	well, I think it's in the table	Transcription Error
223	2	day	base	Transcription Error
224	2	Hold on	Hang on just	Transcription Error
225	7	convince	successfully convince	Transcription Error
225	9	that	who	Transcription Error
226	9	Android I	Android	Transcription Error
226	22	customers and they	customers. They may	Transcription Error
227	19	perspective	prospective	Misspelling
227	20	iPhones	phones	Correction
227	21	source	source of	Transcription Error
233	5	that	who	Transcription Error
233	25	it's	that this is	Transcription Error
238	1	who	that	Transcription Error
241	17	on	on both	Transcription Error
244	25	that and address	it and addressed	Transcription Error
245	1	can	could	Transcription Error
245	23	that	that effect	Transcription Error
247	12	that	who	Transcription Error
247	22	that's going to be	that's here – it'll be	Transcription Error
248	7	get	are	Transcription Error
249	13	Well,	I remember	Transcription Error
250	13	is	concerns	Transcription Error

ERRATA SHEET

NAME OF CASE: *In re Google Play Store Antitrust Litigation, Case No. 3:21-md-02981-JD*
Epic Games Inc. v. Google LLC, et al., Case No. 3:20-cv-05671-JD
In re Google Play Consumer Antitrust Litigation, Case No. 3:20-cv-05761-JD
In re Google Play Developer Antitrust Litigation, Case No. 3:20-cv-05792-JD
State of Utah, et al., v. Google LLC, et al., Case No: 3:21-cv-05227-JD

DATE OF DEPOSITION: 4/6/2023

NAME OF DEPONENT: Douglas Bernheim

Page	Line(s)	Original	Correction	Reason
251	13	cost	costs	Transcription Error
252	22	believe	believe here	Clarification
254	22	likely	likely hunting	Transcription Error
255	9	of your	your	Transcription Error
257	1	potentially	potential	Transcription Error
257	17	competitors	your competitors	Clarification
258	1	it	it reduces	Transcription Error
259	15	there	it's	Transcription Error
263	1	store	store is	Transcription Error
263	16	can	could	Transcription Error
265	20	product	product than its rivals	Clarification
266	10	within	with	Transcription Error
267	12	a	no	Clarification
268	7	timing in mind	timing in mind, since you're asking about the timing	Transcription Error
269	23	you	you would	Transcription Error
270	1	the	my	Clarification
274	22	firms	firm	Transcription Error
276	22	into	in doing	Transcription Error
277	23	calculation	calculations	Transcription Error
280	14	That's	But that's	Transcription Error
280	16	recall	would call	Transcription Error

ERRATA SHEET

NAME OF CASE: *In re Google Play Store Antitrust Litigation, Case No. 3:21-md-02981-JD*
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State of Utah, et al., v. Google LLC, et al., Case No: 3:21-cv-05227-JD

DATE OF DEPOSITION: 4/6/2023

NAME OF DEPONENT: Douglas Bernheim

Page	Line(s)	Original	Correction	Reason
289	10	an online game	a game	Transcription Error
290	19	respond	responded	Transcription Error
291	15	if	of	Transcription Error
298	15	shows	chose	Transcription Error
302	22	specific	significant	Transcription Error
304	24	Android	antitrust	Transcription Error
306	16	a regulatory	a conclusion of a regulatory	Clarification
307	1	conclusion	conclusions	Transcription Error
307	11	it's	is	Transcription Error
308	19	of	about	Transcription Error

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.



Douglas Bernheim

EXHIBIT 4

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

**IN RE GOOGLE PLAY STORE
ANTITRUST LITIGATION**

Case No. 3:21-md-02981-JD

Judge: Hon. James Donato

**EXPERT REPORT OF MATTHEW GENTZKOW
NOVEMBER 18, 2022**

NON-PARTY HIGHLY CONFIDENTIAL – OUTSIDE COUNSEL EYES ONLY

are inconsistent with the claim that Google's service fee necessarily reflects monopoly power gained through the allegedly exclusionary conduct at issue in this case.¹⁸⁹

168. **Exhibit 10** lists the service fees for major competing mobile app stores at launch and as of October 2022. Most stores charged a fee of 30 percent or higher at launch, and most have either maintained fees at this level or, like Google, lowered them for apps meeting certain conditions. In particular, fees were reduced to 15 percent for app developers with less than \$1 million in revenue on the Apple App Store and for the first \$1 million in revenue for all app developers on Google Play.¹⁹⁰ One app store, Aptoide, charges a service fee of 25 percent. Several Chinese app stores, such as those by Xiaomi and Huawei, charge up to 50 percent.

Exhibit 10
Standard Service Fees for Major Mobile App Stores
(as of October 2022)

App Store	Service Fees at Time of Launch	Service Fees as of October 2022 ^[1]
Google Play	• 30% on all transactions	<ul style="list-style-type: none"> • 15% for all subscriptions • 15% for the first \$1 million in non-subscription app revenue; 30% otherwise
Apple App Store	• 30% on all transactions	<ul style="list-style-type: none"> • 15% on subscriptions after the first year • 15% for app developers with less than \$1 million in app revenue; 30% for all other app developers • 30% otherwise

¹⁸⁹ In his deposition, Sameer Samat, Vice President of Product Management at Google, explained that “competitive forces” was one of the factors considered in Google’s decision to initially set a 30 percent service fee on Android Market. Deposition of Sameer Samat, *In re Google Play Store Antitrust Litigation*, 3:21-md-02981-JD, February 2-3, 2022 (“Samat Deposition”), 464:9-23 (“Q. Can you explain how Google decided on the 70/30 split when it first launched paid apps on Android Market? A. I think there were a number of different factors in terms of the pricing model. You know, there are a number of different inputs that go into any determination of pricing including the dynamics in the ecosystem, competitive forces, the value being provided to developers and a number of things that are like that that would go into any pricing decision.”).

¹⁹⁰ In his deposition, Sameer Samat, Vice President of Product Management at Google, noted that Google’s decision to reduce its service fees to 15 percent for the first \$1 million in revenue for all app developers was in response to “competitive dynamic[s]” such as Apple’s reduction in service fees. Samat Deposition, 679:18-680:10 (“Project Runway said for all developers making their first million dollars, the service fee would be 15 percent regardless of other programs they may be participating in. It would be the lower of 15 percent or another program they were participating in. Q. This was in response to a change by Apple in its developer pricing model; correct? A. That was one of the -- certainly competitive dynamic was one of the inputs, but we also took a number of additional inputs and I actually think we improved upon the program versus what Apple or anyone else had done.”).

Amazon Appstore	• 30% (20% for video streaming subscriptions)	• 20% for app developers with less than \$1 million in app revenue and 10% of revenue in Amazon Web Services credits, 30% otherwise
Samsung Galaxy Store ^[2,3]	• 30% (or otherwise agreed upon)	
Aptoide	• 25% for certified publishers (or otherwise agreed upon)	
ONE Store	• 30% on all transactions	• 20% for in-app purchases using ONE Store's payment system • 5% for in-app purchases using a third-party payment system
Xiaomi GetApps	• 50% for games	• 30% on all transactions
Tencent MyApp	• 55% for games	• 55% for games • 30% for new Tencent games
Oppo Software Store		• 52.5% for games • 42.5% for "small" games, such as HTML5 games
Vivo App Store		• 52.5% for "Vivo Mini-Games"
Huawei AppGallery	• 30% for app downloads and non-game in-app purchases • 50% for game in-app purchases • 20% for education apps	

Notes:

- [1] The "standard" fees reported exclude various special programs (*e.g.*, Google's Living Room Accelerator Program).
 [2] As of September 2021, the Samsung App Distribution Guide's in-app payment policy changed to comply with new South Korean legislation approved in September 2021. The legislation prevents app stores from requiring app developers to use their in-app payment systems. The new Samsung policy states: "Samsung in-app payment (IAP) is recommended to sell in-app products (such as items and subscriptions) for your safety and convenience."
 [3] Epic negotiated a 12 percent service fee for the Galaxy Store. *See Exhibit 12.*
 [4] Huawei AppGallery app developers that are based outside of mainland China pay a lower service fee.

Sources: *See Table 1 at the end of my report.*

169. Plaintiffs' experts also present comparisons of Google Play's service fees to those charged by mobile app stores.¹⁹¹ They omit from these comparisons all of the app stores listed in **Exhibit 10** that have service fees greater than 30 percent.
170. The service fees they report for Aptoide are misleading. Both Dr. Rysman and Dr. Singer report the fee for self-distribution through the service Catapult as the lower range of the

¹⁹¹ Bernheim Report, Figures 71 and 72; Rysman Report, Exhibit 69; Singer Report, Tables 7 and 9.



Matthew Gentzkow, Ph.D.

Date: November 18, 2022